IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 14095 of 2007(C)

PETITIONER:

MORNING STAR MEDICAL CENTRE, NAZARETH
HILL, ADIMALI P.O., IDUKKI DISTRICT,
REP.BY MEDICAL SUPERINTENDENT AND ADMINISTRATOR,
DR.SR.AQUINA.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:

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1. THE ASSISTANT PROVIDENT FUND
COMMISSIONER, SUB REGIONAL OFFICE,
EPF ORGANISATION, KOTTAYAM-1.

2. THE EMPLOYEES PROVIDENT FUNDS APPELLATE
TRIBUNAL, NEW DELHI.

BY ADV. SRI.JOY THATTIL ITOOP, SC, EPF ORGANISATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

APPENDIX (WP(C) NO.14095 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the Memorandum of Association and Rules and Regulations.

Ext.P1(a): Copy of the Certificate of Registration dtd.17.4.85.

Ext.P2: Copy of the certificate dtd.12.1.1993.

Ext.P3: Copy of the inspection note dtd.4.9.2001.

Ext.P4: Copy of the written explanation dtd.10.10.2001.

Ext.P5: Copy of the proceedings of the 1st respondent dtd.12.11.2001.

Ext.P6: Copy of the appeal memorandum dtd.28.11.2001.

Ext.P7: Copy of the judgment dtd.15.1.2002 in OP No.1569/2002.

Ext.P8: Copy of the order dtd.29.11.2005 in I.A.No.17543/05 in OP 1569/02.

Ext.P9: Copy of the order dtd.21.10.05 in ATA No.712(7) 2001 passed by the Tribunal.

Ext.P10: Copy of petition along with affidavit submitted by the petitioner before the Tribunal.

Ext.P11: Copy of the counter affidavit dtd.nil filed by R1.

Ext.P12: Copy of the order dtd.27.2.07 passed by the Tribunal.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 14095 OF 2007 - C

Dated this the 31st day of July, 2007

J U D G M E N T

By invoking Section 7A proceedings, the first respondent demanded contributions under the Employees Provident Funds and Miscellaneous Provisions Act (for short 'the Act'). The petitioner filed an appeal before the second respondent-Tribunal. In O.P.No.1569 of 2002, this Court directed that until disposal of the appeal, the coercive proceedings for recovery of the amount should be kept in abeyance. Thereafter, the Tribunal directed the petitioner to deposit 75% of the amount demanded as a condition for considering the appeal on merits invoking powers under Section 7-O of the Act. Apparently, this was without noticing Ext.P7 judgment of this Court as corrected by Ext.P8 order. Therefore, the petitioner filed an application to review the earlier order. The same has been rejected by Ext.P12 order by citing two reasons. One is that the Tribunal does not have powers of review and the second is that the stay order granted by this Court would

not operate against the powers of the Tribunal under Section 7-O of the Act.

2. The petitioner therefore seeks the following reliefs:-

> "a. issue a writ of certiorari or other appropriate writ, order or direction to setting aside Ext.P12 order passed by the Employees Provident Funds Appellate Tribunal, New Delhi;
> b. issue a writ of mandamus or other appropriate writ, order or direction directing the EPF Appellate Tribunal to consider Ext.P6 appeal filed by the petitioner on merits and pass orders without insisting on deposit of amounts;
> c. grant such other and further reliefs as this Hon'ble Court may deem fit to grant in the facts and circumstances of the case."

3. I have considered the rival contentions in detail. Perhaps, on a hypertechnical view, the Tribunal may be correct in saying that the stay granted by this Court would not operate against the power of the Tribunal to order pre-deposit of disputed amount as a condition for considering the appeal on merits. But, I think that the Tribunal has not considered the judgment of this Court in the right spirit. When this Court directs that the recovery shall not be enforced till disposal of the appeal by the Tribunal, I would have expected the Tribunal to

consider this also while passing orders under Section 7-O of the Act. I am also not fully satisfied that the Tribunal does not have powers to reconsider their earlier decision since Rule 21 of the Employees Provident Funds Appellate Tribunal (Procedure) Rules, 1997 clothes the Tribunal with powers to make orders and issue directions to prevent abuse of its process or secure the ends of justice. I am satisfied that this is a situation which calls for orders to secure the ends of justice in view of the fact that this Court had, by Ext.P7 judgment, stayed the recovery, pending disposal of the appeal by the Tribunal.

4. In the above circumstances, I quash Ext.P12 order and direct the Tribunal to reconsider the matter in the spirit in which Ext.P7 judgment, as corrected in Ext.P8 order, has been passed. The Tribunal shall pass fresh orders, as expeditiously as possible.

The writ petition is disposed of as above.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007